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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/258,947 03/01/99 MILLER

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EXAMINER

HM22/0606

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ART UNIT

PAPER NUMBER

1644

DATE MAILED:

06/06/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/258,947

Applicant(s)  
Miller et al.

Examiner  
Martha Lubet

Group Art Unit  
1644



☒ Responsive to communication(s) filed on Mar 3, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-10 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121

- I. Claims 1-3, drawn to an isolated peptide, classified in class 530, subclass 329.
- II. Claims 4-6, drawn to method of identifying a molecule that inhibits ristocetin induced aggregation of platelets, classified in class 435, subclass 7.1.
- III. Claims 7 and 9, drawn to a molecule that inhibits ristocetin induced aggregation of platelets, classified in class 424, subclass 139.
- IV. Claims 8 and 10, drawn a method of modulating the adhesion, aggregation or agglutination of platelets by exposing said platelets to the molecule of Group III classified in class 424, subclasses 139.

2. The inventions are distinct, each from the other because of the following reasons:

The isolated peptide of Group I are patentably distinct from the molecules of Group III because they are biochemically and functionally distinct.

Inventions of Group I and Groups II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the product as claimed can also be used in the materially different processes of eliciting an immune response to the peptide.

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Inventions of Group III and Groups IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the product as claimed can also be used in the materially different processes of purifying a protein which comprises SEQ ID NO:174. .

The inventions of Groups II and IV are distinct, each from the other because of the following reasons: Inventions are unrelated if it can be shown that they are not disclosed as capable of use together, or they have different modes of operation, or they have different functions, or they have different effects. (MPEP § 806.04, MPEP § 808.01). In the instant case, the Invention of Groups II is a materially different process from the invention of Groups IV and is practiced with materially different products .

The inventions of Groups I-IV are patentable over one another. In addition, the search for one of the groups would not be expected to reveal all the references relevant to the other, and therefore the search and examination would be unduly burdensome

Because these inventions are distinct for the reasons given above and the researches required for Groups I-VIII are not coextensive, restriction for examination purposes as indicated is proper.

4. If Applicant elects any of Group I-IV, a further election of species is required and the following requirement shall apply:

Applicant is required under 35 U.S.C. 121 to elect a single disclosed embodiment of the Invention for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1-10 are generic.

Applicant is required to elect a single disclosed embodiment of the elected invention by electing a particular species of peptide comprising SEQ ID NO:174. The species of Groups I are patentably distinct one over the other because peptides that have different amino acid sequences and differ biochemically and functionally. Methods of using the one peptides of Group I are patentably distinct one over the other because they use materially different products. Molecules that bind to one of the peptides of Group I have different abilities to bind to other members of

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genus of peptides which have the motif sequence of SEQ ID NO:174. Methods of using different molecules that bind to the peptides of Group I are patentably one over the other because they use materially different products.

An example of a specific disclosed embodiment of Invention of Group I is an isolated peptide comprising SEQ ID NO:174 wherein amino acid residue 3 is alanine.

An example of a specific disclosed embodiment of Invention III is molecule that binds to an isolated peptide comprising SEQ ID NO:174, wherein amino acid residue 3 is alanine.

An example of a specific disclosed embodiment of Invention IV is a method of modulating adhesion of platelets by exposing platelets to a molecule that binds an isolated peptide comprising SEQ ID NO:174, wherein amino acid residue 3 is alanine.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.


4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h)

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martha Lubet in Art Unit 1816 whose telephone number is (703) 305-7148. The examiner can normally be reached on Monday through Friday from 8:15 AM to 4:45 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached at (703) 305-7939. The FAX number for this group is 703-305-3704. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Martha T. Lubet

June 5, 2000

  
CHRISTINA Y. CHAN  
SUPERVISORY PATENT EXAMINER  
GROUP 1800 1644